IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.760 of 2006

M.Unnamalai ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Magistrate and
District Collector,
Kancheepuram District. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 30.07.2006 in DBFGISSV No.34/2006 against the petitioner's husband Mohan, male, aged 42, son of Ponnuvel, who is confined at Central Prison, Chennai and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran for
Mr.S.Anand Raj

For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Mohan, who is detained as a ''Bootlegger" as contemplated under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 30.07.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, after taking us through the remand order of the learned District Minsif-cum-Judicial Magistrate, Uthiramerur, dated 16.07.2006, the representation of the petitioner and the reply by the detaining authority, has contended that the impugned detention order is liable to be quashed on the ground of non application of mind on the part of the detaining authority.

4. In the light of the above contention, we have verified the remand extension order of the learned District Minsif-cum-Judicial Magistrate, Uthiramerur, dated 16.07.2006, which is available at page 93 of the paper book reads as under :

"ORDER DATED 16.07.2006

Accused produced at my residence at 08.30 p.m. The accused alleged that he was beaten up by the police at the time of his arrest in the right hand. He was given treatment by the police and the Escort Police was possessing the OP Card issued to the accused. Accusation and Free Legal Aid explained. Remanded till 28.07.2006. The jail authorities directed to provide suitable medical treatment to the accused if it is required.

Sd/ G.Sriramajeyam, 16.7.2006
District Minsif-cum-Judicial
Magistrate, Uthiramerur."

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5. It is clear that the accused/detenu has complained to the learned Magistrate that he was beaten by the police at the time of his arrest and OP card issued by the hospital was also shown to the learned Magistrate. In the same order, the learned Magistrate has directed the Jail authorities to provide suitable medical treatment to the accused. When such is the position, when a representation was made to the detaining authority, in the reply dated 30.07.2006 and 10.08.2006, the detaining authority has stated that when the accused/detenu was produced before the learned Magistrate, there was no accusation against the police. The following statement in the reply dated 30.07.2006, which is relevant is as follows:

> 2.பார்வையில் காணும் மனுவில் குறிப்பிட்டுள்ள திரு மோகன் என்பவர் பல மதுவிலக்கு வழக்குகளில் ஈடுபட்டுள்ளார். மேலும் மதுராந்தகம் மதுவிலக்கு அமல்பிரிவு, குற்ற எண்.637/2006ன் கீழான மதுவிலக்கு தொடர்பான வழக்கில் ஈடுபட்டு மதுராந்தகம் மதுவிலக்கு அமல்பிரிவு, கலால்துறையினரால் கைது செய்யப்பட்டு நீதிமன்ற காவலில் உள்ளார். மேலும் இவரை நீதிமன்ற காவலுக்காக 16.7.2006 அன்று மாவட்ட உரிமையியல் மற்றும் நீதித்துறை நடுவர் உத்திரமேரூர் அவர்கள் முன் ஆஜர்படுத்தப்பட்டு வழங்கப்பட்ட நீதிமன்ற உத்தரவில் பகார் ஏதும் இல்லை என உள்ளது. **(Emphasis supplied)** அப்பொழுது கூட மனுதாரரின் கணவர் திரு.மோகன் என்பவர் பகார் ஏதும் தெரிவித்ததாக எந்த ஆவணமும் இல்லை.'

6. Similar reply dated 10.08.2006 was sent to the detenu by the same authority. As rightly pointed out by the learned counsel for the petitioner, when specific accusation was made against the police and the accused had taken treatment at the Government Hospital and when everything were recorded by the learned District Minsif-cum-Judicial Magistrate, Uthiramerur, it is not clear how the detaining authority has stated that no complaint was made against the police at the time of remand. This amply shows non application of mind on the part of the detaining authority, which vitiates the ultimate order of detention. On this ground, we quash the impugned order of detention.

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7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Kancheepuram District.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. S. Anandraj, Advocate SR No. 45362

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